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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/659,112

09/11/2000

Arthur Cameron Wilson

9D-RG-19254

4522

7590

04/26/2004

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EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 04/26/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/659,112

Applicant(s)

WILSON, ARTHUR CAMERON

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 12/17/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/17/03 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Atanasio* (US # 5,103,799) in view of *Koziol* (US #4,848,217).

Atanasio discloses in Figures 1-4 a rack similar to that described in applicant's claims 1 and 3-8 including a frame (10) with a flat first portion (the portions of the rack bounded by side member 14, note Fig. 3) and a second portion that is considered by the examiner to extend obliquely to the first portion (see Fig. 3 and note that end member 18 is not numbered in the figure but is illustrated as extending obliquely upward on the right side of member 14). *Atanasio*

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further discloses a support system including at two first legs (40) and two second legs (42) rearwardly displaced from the first legs wherein are both attached to the first portion (see Figs. 2 and 3). *Atanasio* also discloses a frame (12) that extends from the first side of the first portion. The examiner considers that this frame would function as a handle

In regard to claim 6, frame (12) includes side members (20 and 22) that the examiner considers would each function as a handle, and thus the limitation of two handles extending from the first side of the first portion is met by *Atanasio*.

Atanasio also discloses that the first portion includes a plurality of first rods (18) and second rods (14 and 16) attached substantially perpendicularly to the first rods wherein the first and second rods are substantially co-planar on the first portion of the rack (see Figs. 2 and 3)

In regard to claim 8 and the recitation that the rack is “configured to be used as a trivet on a countertop,” is simply a statement of intended use and given no patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of *Atanasio* would function as a trivet.

In regard to the recitation that the rack is an oven rack, while the rack of *Atanasio* is disclosed as being used as a charcoal grill, a person of ordinary skill in the art would understand that this rack could also be used in an oven and may be considered an oven rack. *Koziol* is cited to support this assertion. *Koziol* discloses a cooking rack in the same field of endeavor as the

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rack of *Atanasio* and *Koziol* notes that such a rack may be employed in any type of cooking device such as an oven or a charcoal grill.

4. Claims 9-12 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Atanasio* in view of *Koziol* as applied above and further in view of *Carpenter et al.* (US # 3,266,484).

In regard claims 9-12 and 14-19, *Atanasio* does not disclose an oven with a cooking chamber comprising a bottom surface and at least three sides. However, *Koziol* is cited to show that does the cooking racks, such as that of *Atanasio*, are intended to be used in an oven (see Abstract) and would placed on the bottom surface thereof. The examiner considers that an oven as noted in *Koziol* would inherently have a cooking chamber with a bottom surface, at least three sides, and a hinged door, as this is conventional structure of an oven. *Carpenter et al.* is cited to simply to show such conventional oven structure including a bottom surface, at least three sides, and a door hingedly attached to the combustion chamber (see Fig. 1). Placing the rack of *Atanasio* in a conventional oven, such as that of *Carpenter et al.*, would result in an oven rack that is configured to be stabilized against the oven door and fit within the combustion chamber. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the cooking rack of *Atanasio* would be placed on the bottom surface of an oven, such as that disclosed in *Carpenter et al.*, for the purpose of supporting items to be cooked in the oven.

In regard to claim 19 and the recitation that the rack is “configured to be used as a trivet on a countertop,” is simply a statement of intended use and given no patentable weight. A

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recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of *Atanasio* would function as a trivet.

5. Alternatively, claims 9, 14, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Koziol* (US #4,848,217) in view of *Carpenter et al.* (US # 3,266,484).

Koziol discloses in Figures 1-5 an oven rack (10) substantially as described in applicant's claims 9, 14, and 17-19 including a support system with a first portion (entire V-shaped grid) with first and second sides. *Koziol* further discloses at least a first leg (23) and a second leg (17) rearwardly displaced from the first leg wherein the first and second legs are attached to the first portion (see Fig. 1). The support system would function to prevent the rack from overextending from the cooking chamber.

While *Koziol* does not expressly disclose an oven with a cooking chamber comprising a bottom surface and at least three sides, *Koziol* does clearly indicate that the cooking rack is intended to be used in an oven (see Abstract) and would be placed on the bottom surface thereof. It is well known in the art that ovens conventionally include cooking chambers with a bottom surface and at least three sides. *Carpenter et al.* is cited to show such conventional oven structure including a bottom surface, at least three sides, and a door hingedly attached to the cooking chamber (see Fig. 1). Placing the oven rack of *Koziol* in a conventional oven, such as that of *Carpenter et al.*, would result in an oven rack that is configured to be stabilized against

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the oven door and fit within the combustion chamber. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the cooking rack of *Koziol* would be placed on the bottom surface of an oven, such as that disclosed in *Carpenter et al.*, for the purpose of supporting items to be cooked in the oven.

In regard to claim 19 and the recitation that the rack is “configured to be used as a trivet on a countertop,” is simply a statement of intended use and given no patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of *Koziol* would function as a trivet.

Response to Arguments

6. Applicant's arguments with respect to claims 1 and 3-12 and 14-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. This action is made non-final. A THREE month shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) months from the mailing date of this communication.

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8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Westmoreland* and *Tiemann* are cited to further show cooking rack structure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc
April 16, 2004


JOSIAH COCKS
PATENT EXAMINER
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